



[BILLING CODE: 6750-01S]

## FEDERAL TRADE COMMISSION

[File No. 122 3153]

### Focus Education, LLC; Analysis of Proposed Consent Order to Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed Consent Agreement.

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**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order -- embodied in the consent agreement -- that would settle these allegations.

**DATES:** Comments must be received on or before February 20, 2015.

**ADDRESSES:** Interested parties may file a comment at

<https://ftcpublic.commentworks.com/FTC/focuseduconsent/> online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “Focus Education, LLC - Consent Agreement; File No. 122 3153” on your comment and file your comment online at

<https://ftcpublic.commentworks.com/FTC/focuseduconsent/> by following the instructions on the web-based form. If you prefer to file your comment on paper, write “Focus Education, LLC - Consent Agreement; File No. 122 3153” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex D), Washington, DC

20024.

**FOR FURTHER INFORMATION CONTACT:** Annette Soberats, Bureau of Consumer Protection, (202-326-2921), 600 Pennsylvania Avenue, NW, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR § 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for January 20, 2015), on the World Wide Web, at <http://www.ftc.gov/os/actions.shtm>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before February 20, 2015. Write "Focus Education, LLC - Consent Agreement; File No. 122 3153" on your comment. Your comment - including your name and your state - will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card

number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any “[t]rade secret or any commercial or financial information which . . . is privileged or confidential,” as discussed in Section 6(f) of the FTC Act, 15 U.S.C. § 46(f), and FTC Rule 4.10(a)(2), 16 CFR § 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR § 4.9(c).<sup>1</sup> Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/FTC/focuseduconsent/> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that website.

If you file your comment on paper, write “Focus Education, LLC - Consent Agreement; File No. 122 3153” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex D), Washington, DC 20580, or deliver your comment to

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<sup>1</sup> In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR § 4.9(c).

the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before February 20, 2015. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

### **Analysis of Proposed Consent Order to Aid Public Comment**

The Federal Trade Commission ("FTC" or "Commission") has accepted, subject to final approval, an agreement containing a consent order from Focus Education, LLC ("Focus Education"), Chief Executive Officer, Michael Apstein, and Chief Financial Officer, John Able ("Respondents").

The proposed consent order ("proposed order") has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves Focus Education's advertising for the ifocus System, which included the Jungle Rangers computer game and comic book, and information on children's behavior, exercise, and diet. The Commission's complaint alleges that the Respondents violated Sections 5(a) and 12 of the Federal Trade Commission Act by making false or unsubstantiated representations that playing the ifocus System's Jungle Rangers computer game improves

children's focus, memory, attention, behavior, and/or school performance, including in children with ADHD, and that these improvements were permanent. The complaint also alleges that Respondents violated Sections 5(a) and 12 by making false representations that scientific studies prove these claims.

The proposed order includes injunctive relief that prohibits these alleged violations and fences in similar and related violations. For purposes of the order, "Covered Product" means any product, program, device, or service that purports to alter the brain's structure or function, improve cognitive abilities, behavior, or academic performance, or treat or lessen the symptoms of cognitive abnormalities or disorders, including ADHD.

Part I of the Order prohibits the Respondents from making any representation that the ifocus System or any substantially similar product improves children's cognitive abilities, behavior, or academic performance, including in children with ADHD unless any such representation is non-misleading and the Respondents possess and rely upon competent and reliable scientific evidence. For purposes of this Part, competent and reliable scientific evidence is defined as "human clinical testing of such product that is sufficient in quality and quantity, based on standards generally accepted by experts in the relevant field, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. Such testing shall be (1) randomized, double-blind, and adequately controlled; and (2) conducted by researchers qualified by training and experience to conduct such testing." In addition, competent and reliable scientific evidence is subject to the preservation requirements set forth in Part IV.

Part II is a fencing-in provision. It prohibits the Respondents from making any claim about the benefits, performance, or efficacy of any Covered Product unless the claim is non-misleading and the Respondents possess competent and reliable scientific evidence that is

sufficient in quality and quantity, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. For purposes of this Part, Covered Product is defined as any product, program, device, or service that purports to alter the brain's structure or function, improve cognitive abilities, behavior, or academic performance, or treat or lessen the symptoms of cognitive abnormalities or disorders, including ADHD.

Competent and reliable scientific evidence means “tests, analyses, research, or studies (1) that have been conducted and evaluated in an objective manner by qualified persons; (2) that are generally accepted in the profession to yield accurate and reliable results; and (3) as to which, when they are human clinical tests or studies, all underlying or supporting data and documents generally accepted by experts in the field as relevant to an assessment of such testing as set forth Part IV are available for inspection and production to the Commission.”

Part III prohibits the Respondents from misrepresenting, in relation to the advertising of any Covered Product, (1) the results of any test, study, or research; or (2) that the benefits of any such Covered Product are scientifically proven.

Part IV requires the Respondents, for human clinical tests or studies, to secure and preserve all underlying or supporting data and documents generally accepted by experts in the field as relevant to an assessment of the test. There is an exception for a “Reliably Reported” test, defined as a test published in a peer-reviewed journal that was not conducted, controlled, or sponsored by Respondents, affiliates, or others in the manufacturing and supply chain. Also, the published report must provide sufficient information about the test for experts in the relevant field to assess the reliability of the results.

Part V contains recordkeeping requirements for advertisements and substantiation relevant to representations covered by Parts I through III of the order.

Parts VI through IX of the proposed order require Respondents to: deliver a copy of the order to principals, officers, directors, managers, employees, agents, and representatives having responsibilities with respect to the subject matter of the order; notify the Commission of changes in corporate structure, discontinuance of current business or employment, or affiliation with any new business or employment that might affect compliance obligations under the order; and file compliance reports with the Commission.

Part X provides that the order will terminate after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the complaint or proposed order, or to modify the proposed order's terms in any way.

By direction of the Commission.

Donald S. Clark,  
Secretary.

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